

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER

☐

DATE

**May 23, 2018**

MOTOR CARRIER MATTER

☐

DOCKET NO.

**2018-2-E**

UTILITIES MATTER

☒

ORDER NO.

**SUBJECT:**

[DOCKET NO. 2018-2-E](#) - Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company - Staff Presents for Commission Consideration the Petition for Rehearing and/or Reconsideration Filed on Behalf of the South Carolina Solar Business Alliance, Incorporated.

**COMMISSION ACTION:**

Mr. Chairman, we've received four Petitions - one from each party of record other than the company to reconsider or rehear our Order No. 2018-322(A) in Docket No. 2018-2-E. The parties raise numerous issues which they ask the Commission to reconsider or rehear and to reach different findings and conclusions. In my view, our Order was comprehensive, supported by the evidence of record, and consistent with the statutes which govern fuel proceedings. I would like to address all the concerns raised by the Petitions in my single motion, since many of the concerns raised are similar or identical.

First, as to the principal concern raised by the South Carolina Energy Users Committee, I move that we clarify now that it was our intention that, having received no objection and with mutual agreement, to order SCE&G to, upon written request by any party of record, provide to that party (1) copies of the monthly fuel recovery reports currently filed with the Commission and ORS and (2) quarterly forecasts beginning with the quarter ending June 30, 2018, of the expected fuel factors to be set at SCE&G's next annual fuel proceeding and SCE&G's historical over/under-collected balance to date. In previous fuel proceedings, SCE&G and the other parties then parties to settlement agreements would mutually consent that SCE&G would put forth reasonable efforts to forecast its expected fuel factors to be set at the next annual fuel proceeding and that these quarterly good-faith forecasts would not be admitted into evidence in any future SCE&G proceeding. I understand that the parties wish to be similarly bound by all aspects of those legacy agreements and so, Mr. Chairman, I move we impose the duties and limitations historically included in the parties' settlements in previous fuel proceedings into our decision and order in this docket. In effect, Mr. Chairman, I move that we grant the Energy Users' Petition and, to the extent that other parties have sought the same relief in their respective Petitions, that relief should be granted.

Mr. Chairman, several of the Petitions have raised the issue that our Order improperly shifted the burden of proof from SCE&G to the Intervenors or ORS. That contention is a mischaracterization of our Order. We did not shift the burden from SCE&G to the other parties, and the burden of proof always resides, as it must, with SCE&G. However, the other parties do have a burden of persuasion that their proposed alternatives are reasonable and viable if they seek adoption of those alternatives, as they did here. In fact, the Petitioners assert that they presented alternatives to SCE&G's proposed avoided capacity cost factor, but

none of those parties offered probative evidence of a computed factor as opposed to a mere concept for deriving a factor, as ORS Witness Horii proposed for our consideration. None of the proposals of those parties represent fully viable alternatives. Consequently, the parties failed to meet their burden of persuasion to prove to this Commission the reasonableness and viability of any alternatives to SCE&G's proposal.

Several of the parties assert that SCE&G's responses to their discovery requests were insufficient to allow them to prepare evidence by which they might have proposed alternatives to SCE&G's proposed avoided-cost factor. For example, the ORS complains that, "SCE&G failed to cooperate by providing complete and reliable data in a timely manner and, therefore, had the ability to dictate the extent to which other parties could present their cases." Various discovery devices are available to enable a party to gather information to prepare and present evidence in our proceedings. If there were a discovery dispute, the proper mechanism to require a party to provide properly discoverable information is a motion to compel. No party moved to compel discovery in this proceeding. Moreover, this Commission understood that all discovery issues were actually resolved prior to the hearing. For example, by its March 7th filing, the Solar Business Alliance stated that, as a result of the PR-1 and PR-2 and avoided-cost issues being considered as a part of the fuel case, it needed an additional 90 days to prepare its case, or, in the alternative, it requested that the case be continued until the parties had, "ample time to complete discovery requests and report back to the Commission." SBA considered that the issues were too complicated for adequate preparation in the existing timeframe.

In resolution of the Petitioners' shared concerns about adequacy of time for discovery, the parties advised the Commission of an agreement among the parties subsequently approved by the Commission by Directive Order No. 2018-178, issued March 14, 2018 that the company and the parties had resolved their differences as to the procedural schedule in this case. Specifically, they informed the Commission that these issues had been resolved through a commitment from SCE&G to provide discovery responses prior to their due date and to agree to extensions of SBA's prefiled testimony deadlines. Therefore, this Commission issued an order on March 14th approving the parties' settlement resolving SBA's initial request for a 90-day delay.

The parties availed themselves of the concession by SCE&G with the filing of their direct and surrebuttal testimony. Having received the benefit of accelerated discovery production and additional time to file testimony, and this Commission's approval of such a settlement, the parties' position describing a lack of cooperation and time for preparation seems inconsistent with the prehearing representations.

There is a contention by the Solar Business Alliance that using the approved factor from the most recent fuel case should enjoy a presumption of reasonableness and could be adopted as an alternative to SCE&G's proposal. Unlike a mere concept, a previously approved factor has already been litigated. In this case, those Petitioners would have us extract a single element out of a historical fuel factor and ignore the effects of the passage of time and all attendant changing circumstances. Pursuant to South Carolina Code Section 58-27-865(B), the fuel statute's recognition of changing environments and the appropriate and commensurate regulatory response compels us to revisit, reset, and redefine the fuel factors during these annual proceedings. The use of a previously approved factor might be appropriate in the circumstance in which no party had satisfactorily proven its case. That is not the circumstance here.

In Order No. 2018-322(A), this Commission made specific individual findings as to each element of SCE&G's proposed rates and we implicitly or explicitly found the underlying methodology for deriving them to be reasonable. Regarding this subject, SCE&G, upon whom the burden of proof resides, has met its burden.

The Solar Business Alliance would have us use post-hearing compliance filings to fill in evidentiary gaps after the hearing. While such a filing may be used to address a recalculation of narrow and specific adjustments to a proposed rate, it is inappropriate and improper for a party to attempt to use post-hearing compliance filings as a method to force an adverse party to generate the moving party's own proposals. Even if that were done, the proposal of such a factor would be effectively unavailable for cross-examination by the parties or exploration by this Commission.

I would note, finally, that nothing in this motion or in our Order No. 2018-322(A) would preclude any party to this proceeding from preparing and presenting evidence of alternatives to any proposal or concerning any issue in future fuel proceedings.

For these reasons, Mr. Chairman, I move that we grant reconsideration to the South Carolina Energy Users' Petition, which would also include granting reconsideration to the other Petitioners to the extent that they sought the same relief regarding the quarterly and monthly reports. Mr. Chairman, I move that we deny reconsideration and/or rehearing on all other matters brought before us and all other petitions for reconsideration and/or rehearing.

PRESIDING: Whitfield

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BOCKMAN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
ELAM	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
FLEMING	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding

